

## **EXHIBIT 3**

### **Information Provided by Respondent**

**From:**

**Enforcement Action 2010-49**

**October 29, 2010 Hearing**

**Agenda Item No. 15A**

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October 29, 2010

Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, CA 95821

**Re: Robert and Carrie Sieglitz, 2817 Garden Highway, Sacramento,  
California; Encroachment Removal Enforcement Action 2010-49**

Dear Board Members:

We submit this letter summarizing the response by Mr. and Mrs. Sieglitz to the claims made by the CVFPB staff report in connection with this matter.

**Background**

Mr. and Mrs. Sieglitz acquired the property at 2817 Garden Highway in 1978 and moved the structure that became their home onto the property in 1982. In 1992 they moved two Conex Boxes onto the property. Each of the boxes is 40 ft long by 8.5 ft. high by 8 feet wide. Mr. and Mrs. Sieglitz use the boxes for storage purposes.

The boxes were set on two concrete curbs constructed perpendicular to the levee. No portion of the slope of the levee or the slope of the fill adjacent to the levee was excavated to make room for the Conex Boxes.

After the Conex Boxes had been installed, the Sieglitzes cut away a portion of the fill adjacent to the levee, but not the levee itself, to create a narrow tunnel between the fill and the closest Conex Box. They store tools in the narrow tunnel. The tunnel is shown at Figures 2a and 2b of the staff report. The distinction between the levee, which was constructed of silty sand dredged from the river, and the fill, composed of clay soil and loam mixed with chunks of brick and broken concrete, is critical. Mr. and Mrs. Sieglitz have not cut into the silty sand that makes up the levee to create the narrow tunnel. They have, however, removed pieces of broken concrete and cut slightly into the clay soil and loam of the fill immediately adjacent to the Conex Boxes.

They covered the Conex Boxes with a walkway/roof that is supported by a concrete curb located on top of fill situated adjacent to the levee and that stretches from this fill across the roofs of the Conex Boxes. Grass grows on the walkway/roof.

The Conex boxes, narrow tunnel excavated out of the fill and the elevated walkway/roof are visible from the Garden Highway and have been since the boxes were installed in 1992.

The grade of the bank adjacent to the Conex Boxes was steeper than 3:1, even before excavation by the Sieglitzes of the fill. This steep grade is evident in the staff photos showing the slope immediately south of the boxes, where Mr. Sieglitz has not dug.

CVFPB is proceeding by way of title to an easement it acquired in 1913 pursuant to a grant from Valentine McClatchy to Reclamation District No. 1000 ("RD 1000") (Exhibit A hereto). That grant conveyed a right of way and easement –

[F]or the purpose of building, constructing, enlarging and maintaining thereon, a levee or embankment for reclamation purposes only, in accordance with plans that have been or may hereafter be adopted...

RD 1000 entered into a Joint Use Agreement with CVFPB on June 26, 2009. By that Joint Use Agreement, of course, RD 1000 can grant CVFPB no more rights than it possesses under the original easement.

With that background, it is instructive to turn to the claims made by Staff.

### CVFPB Staff Claims

#### **Item 1. Excavation of waterside levee to accommodate two Conex containers and a boat carrier.**

##### A. Staff Claim:

"The levee toe was cut in order to accommodate the two Conex containers (see Attachment E). This is a violation of the Board's Regulations Section 112(b), which states that "*banks, levees, and channels of floodways along any stream, its tributaries, or distributaries may not be excavated, cut, filled, obstructed, or left to remain excavated during the flood season.*" (Staff Report, p. 4)

##### Sieglitz Response:

1. Statute of Limitations. CVFPB's claims are barred by the statute of limitations. Code of Civil Procedure section 315 bars legal action as to any improvements made by the Sieglitzes more than 10 years ago. That includes the Conex Boxes, the narrow tunnel excavated

from the fill adjacent to the boxes and the elevated walkway/roof, all of which were completed more than ten years ago. Section 315 states:

WHEN THE PEOPLE WILL NOT SUE. The people of this State will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless:

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,
2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

There is some legal authority, commencing with *Hoadley v. San Francisco* (1875) 50 Cal. 265, stating that the 10-year statute of limitations does not apply to recover property dedicated for public use in some instances. But *Hoadley* has recently been strictly limited in its application to adverse possession cases. (*Marin Healthcare District v. Sutter Health* (2002) 103 Cal.App.4th 861.) Mr. and Mrs. Sieglitz do not claim to have acquired any rights through adverse possession, however. Rather, they claim only that the statutory 10-year limitation bars enforcement by CVFPB of any easement rights as to improvements made more than 10 years ago.

2. 23 CCR, section 112(b) prohibits excavating the levee. But Mr. Sieglitz did not excavate any part of the levee. He took the levee as he found it. No part of the toe of the levee or fill was altered to accommodate the footprint of the Conex Boxes. After the boxes had been situated, Mr. Sieglitz cut away some of the fill to make a narrow tunnel between the levee and the Conex boxes. But it was fill – not the levee proper – that he cleared away for the tunnel. An examination of portions of the levee immediately adjacent to the areas where Mr. Sieglitz removed the fill establishes the point. The original levee was constructed using river bottom silty sand. The fill removed by Mr. Sieglitz adjacent to the Conex Boxes was not silty sand, as the photos accompanying the Staff Report show. Indeed, sand would not hold the near vertical angle of the fill remaining after Mr. Sieglitz excavated his narrow tunnel. The fill, on the other hand, does hold the grade, because it is composed of clay soil and loam, mixed with chunks of brick and broken concrete. Where the existing fill was of insufficient height at the base, Mr. Sieglitz added sand bags to raise the ground level to create a walking path at the elevation of the curbs supporting the Conex Boxes.

B. Staff Claim:

“The current waterside levee slope is almost vertical as a result of the levee toe cut. This is a violation of the Board’s Regulations Section 120 (a)(24), which states that *‘the finished slope of any project levee construction or reconstruction must be three (3) feet*

*horizontal to one (1) foot vertical, or flatter, on the waterside and two (2) feet horizontal to one (1) foot vertical, or flatter, on the landside of the levee.”*

Sieglitz Response:

1. Statute of limitations. See above.
2. Mr. Sieglitz did not excavate the levee. He excavated clay soil and loam fill that were not part of the actual levee. See above.
3. The Staff Report fails to quote 23 CCR, section 120(a)(24) in its entirety. Section 120(a)(24) refers only to levees that are “constructed, reconstructed, raised, enlarged, or modified within a floodway” and says they will be “designed and constructed” according to the 3:1 standard. But 23 CCR, section 120(a)(24) does not apply to the Sieglitzes’ situation because they did not “construct, reconstruct, raise, enlarge, or modify” the levee. Section 120(a)(24) states:

“(a) Levees constructed, reconstructed, raised, enlarged, or modified within a floodway shall be designed and constructed in accordance with the U.S. Army Corps of Engineers manual, “Design and Construction of Levees” (EM 1110-2-1913 dated March 31, 1978, which is incorporated by reference) and as supplemented with the following standards:

...

(24) The finished slope of any project levee construction or reconstruction must be three (3) feet horizontal to one (1) foot vertical, or flatter, on the waterside and two (2) feet horizontal to one (1) foot vertical, or flatter, on the landside of the levee.”

4. Moreover, the slope was never 3:1, even if the removed fill is taken into account. The Conex Boxes were dropped into place before any fill was excavated. The slope never extended to the Conex Boxes. The slope never extended out as far as the drawing enclosed as Attachment E to the Staff Report shows. That should not be surprising, since there are many portions of the levee up and down the river where the grade on the unimproved waterside is less than 3:1, as photos enclosed with this letter show. (Exhibit B, hereto.) In effect, CVFPB appears to want Mr. Sieglitz to restore the waterside levee on his property to a 3:1 grade that it never had, and that other portions of the levee on the river do not have either.

C. Staff Claim:

“The levee cut and installation of the Conex containers and boat carrier interferes with RD 1000 operations. As such, the Respondents violated the Board’s Regulations Section 133(a), which states that *‘the owner or permittee must maintain the waterward slope of the levee and the utilized area within the floodway of the Sacramento River in the manner required by Reclamation District 1000 or any other agency responsible for maintenance.’*”

Sieglitz Response:

1. The "boat carrier" was a boat trailer, which has since been sold. However, there are other vehicles now parked in the same place. When the district needs to perform work there, they can be moved.

2. The easement under which RD1000 and CVFPB enjoy rights across the Sieglitz property does not in this case authorize CVFPB to prohibit parking movable vehicles adjacent to the levee. The original easement conveyed to RD 1000 a right of way "...for the purpose of building, constructing, enlarging and maintaining thereon, a levee or embankment for reclamation purposes only..." Parking vehicles adjacent to the levee interferes with none of those rights when those vehicles can easily be moved to accommodate levee maintenance requirements.

3. Statute of limitations. See above.

4. Staff's reference to 23 CCR, section 133(a) is misleading. Section 133(a) does not give RD 1000 unfettered discretion. Section 133(a) can mean only that a property owner must comply with statutes or properly adopted regulations which in turn are consistent with the original easement. Section 133(a) does not entitle CVFPB to enforce requirements that have not been enacted in statute or adopted by regulation. Were it otherwise, the Administrative Procedures Act would be a dead letter because RD 1000 could require the owner to maintain the waterward slope in any manner RD 1000 chose, without regard to regulations.

**Item II. Placement of uncontrolled fill material on the waterside slope perpendicular to the levee to serve as a secondary driveway.**

A. Staff Claim

- "The respondents have placed uncontrolled fill material to serve as an alternate driveway to the property without prior Board approval. This action is in violation of the Board's Regulations Section 115(a) which states '*dredged, spoil, or waste materials, regardless of their composition, may not be deposited on the levee crown, levee slopes or within the limits of a project floodway without specific prior approval of the board.*'"
- "The placement of fill material on the waterside of the levee consists of uncompacted debris and broken concrete. In the event of a storm, the debris will flow onto the channel and cause additional sedimentation. This action is in violation of the Board's Regulations Section 116(6), which states '*stockpiles of materials or the storage of equipment, unless securely anchored, downed trees or brush, and floatable material of any kind are not allowed within a floodway during the flood season as defined in Table 8.1.*'"
- "The fill material used to serve as a driveway is not suitable material in accordance with the Board's Regulations Section 130 (c)(1), which states that '*access ramps must be constructed of approved imported material.*'"
- "The fill material was not compacted in accordance with the Board's Regulations Section 130(c)(3), which states that (3) '*any excavation made*'"

*in a levee section to key the ramp to the levee must be backfilled in four- (4) to six- (6) inch layers with approved material and compacted to a relative compaction of not less than ninety (90) percent per ASTM D1557-91, dated 1991, and above optimum moisture content.’’*

Sieglitz Response:

1. Construction of the driveway did not involve digging into the levee. To the contrary, the construction of the driveway involved adding fill composed of dirt and broken concrete over the top of existing fill already located on and against the levee. The levee was not weakened in any way by the construction of the driveway; it was reinforced.

2. The original grant of easement “...for the purpose of building, constructing, enlarging and maintaining thereon, a levee or embankment for reclamation purposes only...” does not authorize CVFPB to prohibit the use of these driveway construction materials in this situation where the construction does not weaken the levee and does not interfere with the purposes for which the easement was created.

3. The use of dirt and concrete rubble material in constructing the Sieglitz driveway is consistent with the Reclamation Board permit and Army Corps of Engineers permit that the Sieglitzes obtained in 1978 in connection with reinforcing the levee (Exhibit C, hereto). While those permits have since expired, the engineering on which they were based is as sound today as it was then.

4. The construction of the driveway affords access directly from the Garden Highway to the down-river end of the Sieglitz property by CVFPB personnel for levee maintenance purposes. Absent the driveway, no such direct access exists.

5. The Sieglitz driveway has been constructed consistent with the authority under 23 CCR, section 133(c)(1) and (c)(3). The driveway connects the Garden Highway, above the floodplain, to the level ground on the Sieglitz property below, at the flood plain. 23 CCR, §133(c)(1), (c)(3) states:

(c) Within the area located between the waterward levee shoulder and a point sixty-five (65) feet waterward from the centerline of levee, the following conditions apply:

(1) Where the area is less than one (1) foot above the design flood plane, driveways and ramps may be constructed at any orientation to the levee.

.....

(3) Where the entire area is at least one (1) foot above the design flood plane, no restrictions apply to fences, walls, and similar structures.

With respect to the portion of the driveway that is less than one foot above the design flood plain, subsection (c)(1) permits construction “at any orientation to the levee.” The term “orientation” may refer in part to alignment, but also embraces composition. With respect to the portion of the driveway that is more than one foot above the flood plain, subsection (c)(3) states “...no restrictions apply to fences, walls and *similar structures*.” A driveway is a “similar

structure.” Like a fence or wall, the driveway represents an improvement on the property, does no harm to the levee, and demarks access on or to the property.

6. Mr. and Mrs. Sieglitz acknowledge they have not applied for a permit for the driveway. They are willing to make such an application.

B. Staff Claim

“The placement of uncontrolled fill interferes with RD 1000 activities and as such is in violation of the Board’s Regulations Section 133(a), which states, *‘the owner or permittee must maintain the waterward slope of the levee and the utilized area within the floodway of the Sacramento River in the manner required by Reclamation District 1000 or any other agency responsible for maintenance.’*”

Sieglitz Response:

Section 133(a) does not give RD 1000 unfettered discretion. Section 133(a) can mean only that a property owner must comply with statutes or properly adopted regulations. Section 133(a) does not entitle CVFPB to enforce requirements that have not been enacted in statute or adopted by regulation. Were it otherwise, the Administrative Procedures Act would be a dead letter because RD 1000 could require the owner to maintain the waterward slope in any manner RD 1000 chose, without regard to regulations.

**Item III. Placement of encroachments (two 8.5 ft tall Conex containers, metal roof resting on the levee slope), and boat carrier within 10 ft from the waterside levee toe.**

A. Staff Claim:

“The placement of the two Conex containers and boating facilities are not properly anchored and therefore are in violation of the Board’s Regulations Section 137 (i), which states that *‘The storage of materials or equipment, unless securely anchored, downed trees or brush, and floatable material of any kind are not allowed within a floodway during the flood season as defined in Table 8.1.’*”

Sieglitz Response:

1. Statute of limitations. See above.
2. The term “boating facilities” evidently refers to a boat trailer that has since been sold. However, there are other vehicles now parked in the same place. When the district needs to perform work there, the vehicles can be moved. The regulation cited applies to floatable materials and equipment such as dock, boats, etc., and does not refer directly or by implication to vehicles, trailers or the like.
3. The easement under which RD1000 and CVFPB enjoy rights across the Sieglitz property does not in this case authorize CVFPB to prohibit parking movable vehicles or trailers or movable equipment adjacent to the levee. The original easement conveyed to RD 1000 a right of way “...for the purpose of building,

constructing, enlarging and maintaining thereon, a levee or embankment for reclamation purposes only..." Parking vehicles adjacent to the levee interferes with none of those rights when those vehicles can easily be moved to accommodate levee maintenance requirements.

B. Staff Claim:

"The placement of the metal roof above the storage units interferes with RD 1000 activities and therefore is in violation of the Board's Regulations Section 133(a)."

Sieglitz Response:

1. Statute of limitations. See above.
2. The elevated walkway/roof is authorized by regulation. Subsection 133(c)(4) states, "Elevated walkways and driveways are permitted without elevation restrictions."
3. Section 133(a) does not give RD 1000 unfettered discretion. Section 133(a) can mean only that a property owner must comply with statutes or properly adopted regulations. Section 133(a) does not entitle CVFPB to enforce requirements that have not been enacted in statute or adopted by regulation. Were it otherwise, the Administrative Procedures Act would be a dead letter because RD 1000 could require the owner to maintain the waterward slope in any manner RD 1000 chose, without regard to regulations.

Conclusion

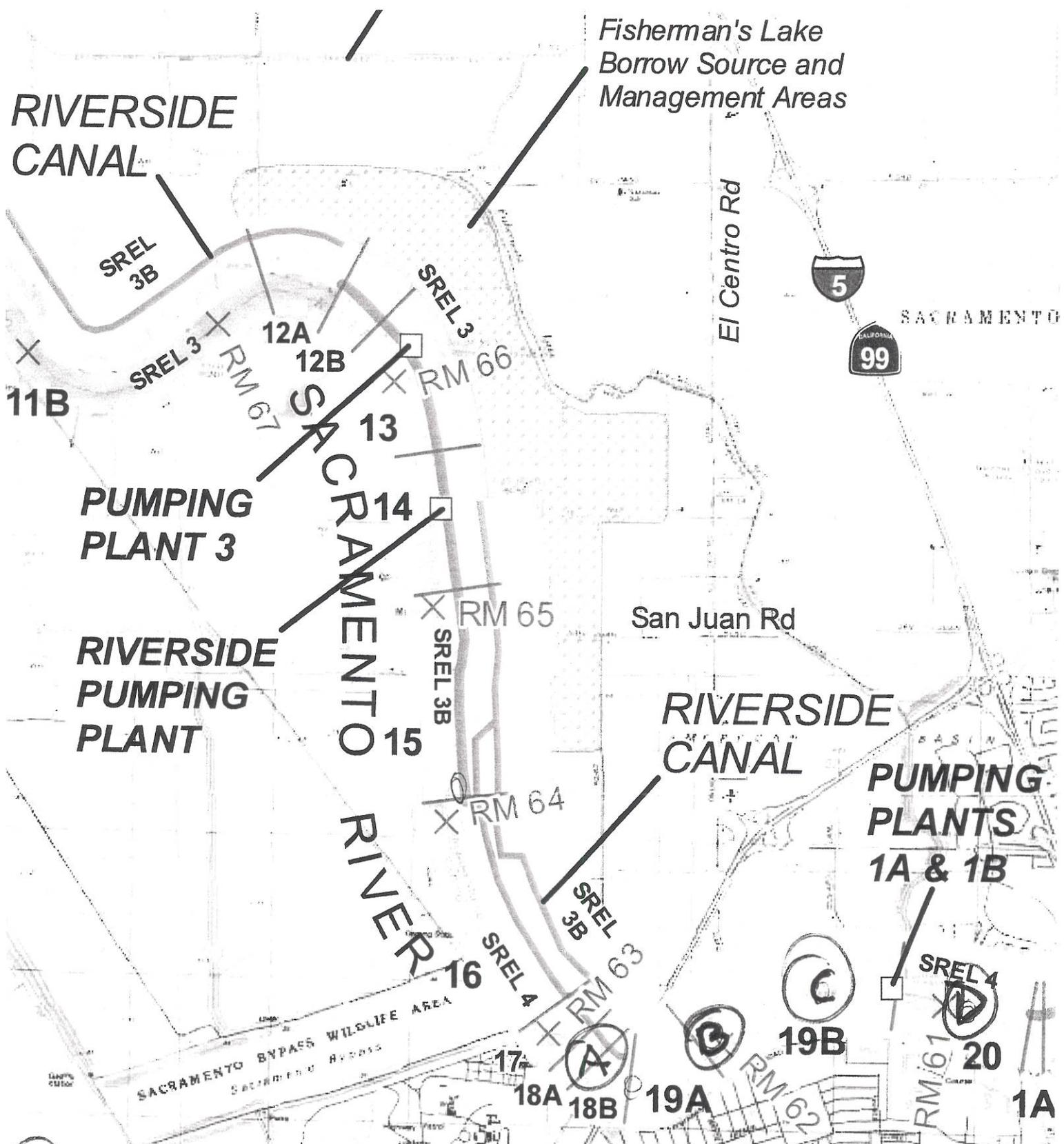
Mr. and Mrs. Sieglitz have lived on the property along the Garden Highway since 1982. They have maintained their property in a condition that is both safe and sound. For the reasons described above, we believe they have complied with the letter and the spirit of the original easement governing the rights of CVFPB and RD 1000 in the property, as well all applicable laws.

Yours sincerely,



THOMAS S. KNOX

TSK/smd  
Enclosures  
cc: Robert and Carrie Sieglitz



- (A) 2100 Block. GARDEN Hwy.
- (B) SAND COVE
- (C) MARINA/ORCHARD RD.
- (D) CHEVY'S

(A) 2100 Block - GARDEN Hwy

2100 Block - GAH



(2)



③ SAND COVER



© MARINA SD FROM ORCHARD RD RD

① CHEVY'S





D) CHEVY'S

Power Tools, Electrical Supplies - MONTGOMERY WARD - Electric Drills and

# THE RECLAMATION BOARD APPROVAL OF PLANS

Application No. 11636-A GM

The Application of: **Ralph G. Marston and  
Robert A. Sieglitz  
1900 Point West Way #171  
Sacramento, CA**

for approval of plans

To reinforce and reclaim eroded bank with concrete, stone, masonry and bituminous, located on the left bank of Sacramento River, 1.28 kilometres (0.8 mile) downstream from San Juan Road. Section 20, T. 9 N., R. 4 E., M.D.B.&M., (Reclamation District No. 1000) Sacramento River, Sacramento County.

On the 25<sup>th</sup> day of August, 1978, The Reclamation Board or its General Manager pursuant to delegation from the Board, has considered this application: Now, therefore, it is ORDERED that this application and plans attached therein are hereby approved and permission to proceed with the work in accordance therewith is hereby granted subject to all terms, conditions, and restrictions attached hereto which are incorporated herein by reference and made a part hereof.

### GENERAL CONDITIONS

- ONE: This approval is issued under the authority of Sections E700-E723 of the State Water Code;
- TWO: This approval is to be strictly construed and no work, other than that specifically described herein, is authorized hereby.
- THREE: This approval of plans does not carry with it permission to construct any works on lands owned by the Sacramento and San Joaquin Drainage District, nor on any other lands whatsoever;
- FOUR: The work hereunder shall be accomplished under the direction and supervision of the State Department of Water Resources and applicant shall conform to all requirements of said Department and the State Reclamation Board, and applicant shall notify said Department of Water Resources, P. O. Box 160088, Sacramento, CA 95816, telephone (916) 445-3942, at least three days prior to commencement;
- FIVE: This approval shall be void unless the work herein contemplated shall have been commenced within one year after issuance;
- SIX: This approval shall remain in effect until revoked. This approval is revokable on 15 days' notice in the event that any conditions contained herein are not complied with;
- SEVEN: It is understood and agreed by applicant that the commencement of any work under this approval shall constitute an acceptance of the provisions of this approval and an agreement to perform in accordance therewith;
- EIGHT: This approval is granted with the understanding that this action is not to be considered as establishing any precedent with respect to any other application received by The Reclamation Board;
- NINE: The applicant to whom this approval is issued shall, whenever the same is required by law, secure the written order or consent to any work hereunder from any other public agency having jurisdiction;
- TEN: Upon completion of the work all waste material and debris shall be entirely removed from the site of the work and the site left in as presentable a condition as before the work started;
- ELEVEN: The applicant is responsible for all liability for personal injury or property damage which may arise out of failure on the applicant's part to perform his obligations under this approval. In the event any claim of liability is made against the State of California or any department thereof, the United States of America, a local district or other maintaining agency and the officers, agents or employees thereof, applicant shall defend, indemnify and hold each of them harmless from such claim;
- TWELVE: The applicant agrees by the acceptance of this approval to exercise reasonable care to operate and maintain properly any work authorized herein and agrees to conform to standards of operation and maintenance prescribed by the State of California;

THIRTEEN: Applicant shall at his own cost and expense remove, alter, relocate or reconstruct all or any part of the work herein approved in accordance with the order of The Reclamation Board so to do and in the manner prescribed thereby, should said work or any portion thereof not conform to the conditions of this approval.

SPECIAL CONDITIONS

FOURTEEN: That imported material shall be used when developing the ramps, and no cuts shall be allowed to remain in the levee section upon completion of the ramp.

FIFTEEN: That all existing trees and brush to be cleared shall be completely burned or otherwise removed from the overflow area.

SIXTEEN: That no further landscaping or encroachments within the project works, not covered by this application, shall be permitted without the prior approval of The Reclamation Board.

SEVENTEEN: That the proposed bank protection work shall be placed uniform and transitioned into the natural bank at both ends.

EIGHTEEN: That the proposed riprap shall not contain any floatable or objectionable material.

NINETEEN: That the fill placed within 30 feet of the top of the bank for access ramps to the riverbank shall be removed upon completion of the bank protection work.

TWENTY: That the concrete rubble shall not contain any exposed reinforcing steel.

TWENTY-ONE: That all existing trees and brush to be cleared shall be completely burned or otherwise removed from the overflow area.

TWENTY-TWO: That this Approval of Plans supersedes the Tentative Approval of Plans issued on June 26, 1978.

(SEAL)

Dated: AUG 25 1978

John F. ...  
GENERAL MANAGER

WHEN RECORDED MAIL TO:

Department of the Army  
Sacramento District, Corps of Engineers  
ATTN: Regulatory Section  
650 Capitol Mall  
Sacramento, California 95814

DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS, AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS, that whereas under Section 403, 1344 of Title 33 of the United States Code the Sacramento District Engineer, U. S. Army Corps of Engineers, has authorized certain improvements on and/or adjacent to my certain piece of real property at Assessor's Parcel No. ~~45,46,47,48~~ <sup>225, 210-44</sup> in the County of Sacramento, State of California, described in that certain deed recorded as Instrument No. 40641 of Book 7803-210n Page 235 of the official records of Sacramento County, I, the owner of said real property in consideration of such authorization certify and declare that the following covenants, conditions, and restrictions are placed on said property for the protection of the owner and the public at large:

- a. All conditions in that authorization document known as Department of the Army Permit No. 6624 in the official records of the U. S. Army Corps of Engineers, Sacramento District, will be observed.
- b. That the Sacramento District Engineer will be informed when the authorized improvements are permanently removed.
- c. That no alterations or additions to the improvements will be made unless expressly authorized by the U. S. Army Corps of Engineers.
- d. These covenants are to run with the land and shall be binding on all successors and assigns of the owner.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

OWNER(S) OF RECORD:

\_\_\_\_\_  
ROBERT A. SIEGLITZ

\_\_\_\_\_  
CARRIE JO SIEGLITZ  
STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand nine hundred and \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, State of California, duly commissioned and sworn, personally appeared \_\_\_\_\_

known to me to be the person \_\_\_\_\_ whose names are subscribed to the within instrument and acknowledged to me that \_\_\_\_\_ he \_\_\_\_\_ executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of \_\_\_\_\_ the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public, State of California  
My Commission Expires \_\_\_\_\_

Application No. 8624

Name of Applicant Robert A. Sieglitz

DEPARTMENT OF THE ARMY  
SACRAMENTO DISTRICT, CORPS OF ENGINEERS  
650 CAPITOL MALL  
SACRAMENTO, CALIFORNIA 95814

Effective Date "upon recordation of CCRs documents"

Expiration Date (If applicable) 1 July 1980

DEPARTMENT OF THE ARMY  
PERMIT

Referring to written request dated 20 June 1978 for a permit to:

() Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

() Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, P.L. 92-500);

() Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92-532);

Robert A. Sieglitz, 1900 Point West Way #171, Sacramento, California 95815,

is hereby authorized by the Secretary of the Army:

to place riprap,

in the Sacramento River (Mile 64.1),

at Assessor's Parcel Nos. 225-210-44, 225-210-45, 225-210-46, 225-210-47, 225-210-48  
near the city of Sacramento, California,

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings: give file number or other definite identification marks.) "Proposed bank reclamation and reinforcement,"  
dated 20 June 1978.

subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

*encl 1-2*

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementat on plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not started on or before \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, ~~(one year from the date of issuance of this permit unless otherwise specified)~~ and is not completed on or before \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

(a) This permit becomes effective the date the Declaration of Establishment of Conditions, Covenants, and Restrictions document is recorded with Sacramento County Recorders Office.

(b) That no bituminous rubble shall be used as part of the bank protection or fill and that all such existing material be removed.

(c) That except for at the toe of slope no broken concrete shall protrude riverward more than 24" from the finished bank slope.

(d) All existing exposed reinforcing bars shall be removed flush with the surface of the broken concrete.

(e) That all broken concrete used for bank protection shall be graded in size and used in such a manner that the completed work will have a finished look.

(f) That all bank protection work will be transitioned into the existing bank at the upstream and downstream end of the project in a manner to prevent further erosion.

(g) Existing bank vegetation shall be protected and regrowth of riparian vegetation shall be permitted within the project site.

The following Special Conditions will be applicable when appropriate:

**STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:**

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

**MAINTENANCE DREDGING:**

~~a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for \_\_\_\_\_ years from the date of issuance of this permit (ten years unless otherwise indicated);~~

~~b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.~~

**DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:**

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

**DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:**

~~a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.~~

~~b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.~~

This permit shall become effective on the date of the District Engineer's signature.

**recording of CC&Rs document.**

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

\_\_\_\_\_  
PERMITTEE

\_\_\_\_\_  
DATE

**B. AUTHORITY OF THE SECRETARY OF THE ARMY:**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

DISTRICT ENGINEER,  
U.S. ARMY, CORPS OF ENGINEERS

Transferee hereby agrees to comply with the terms and conditions of this permit.

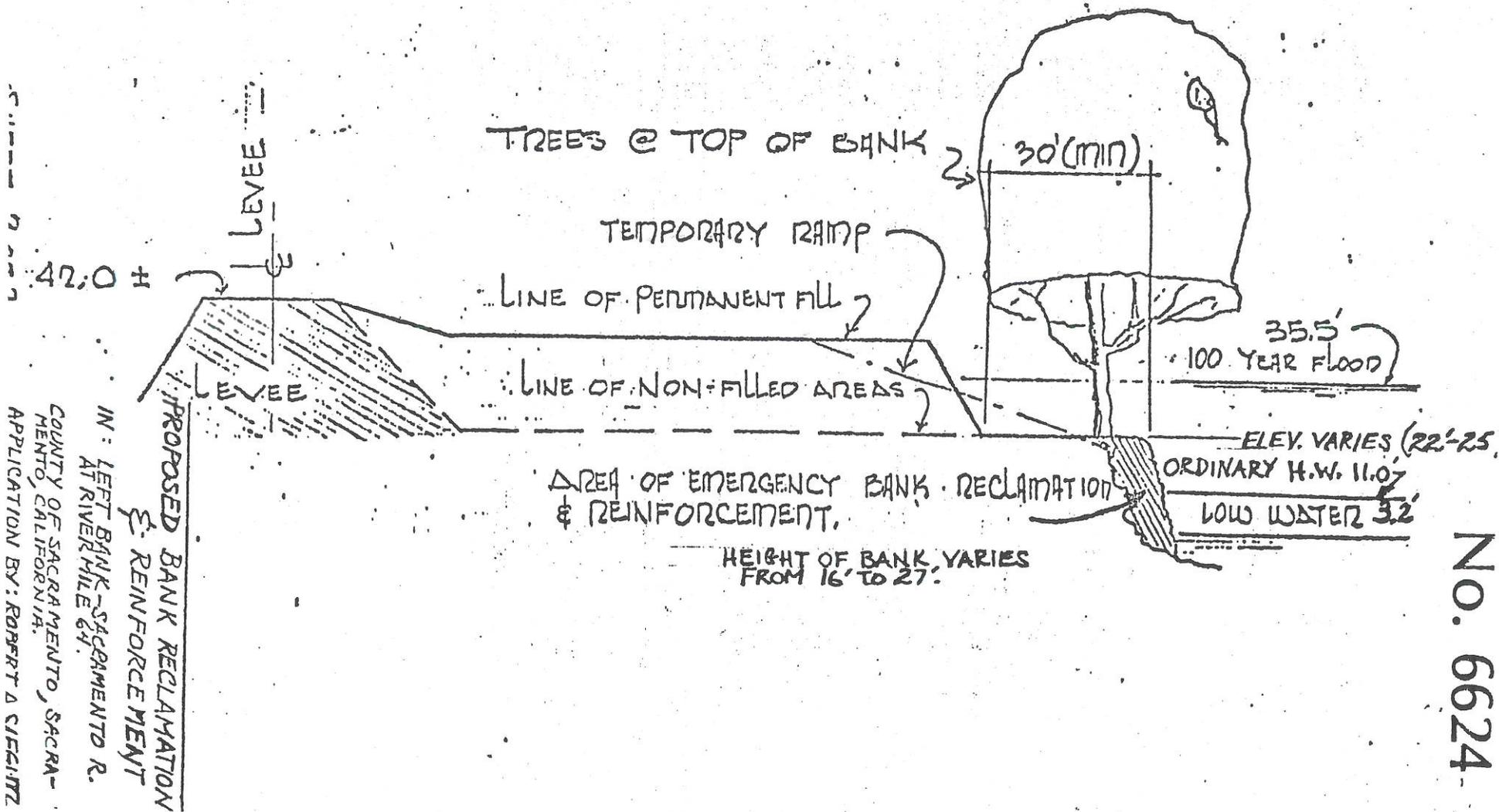
\_\_\_\_\_  
TRANSFEREE

\_\_\_\_\_  
DATE



# TYPICAL PROPERTY SECTION

NO SCALE



No. 6624



SAFCA

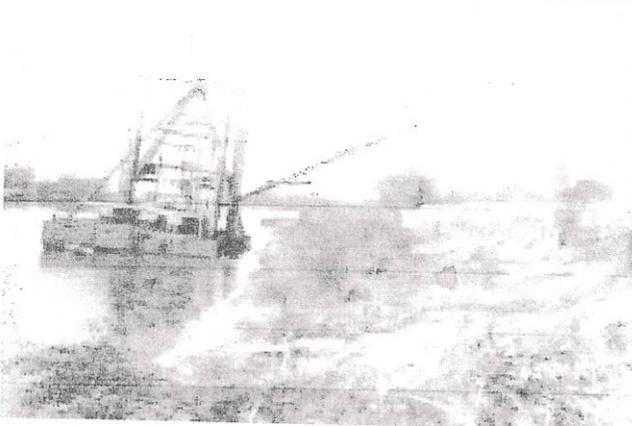
# Post-Authorization Change Report and Interim Re-evaluation Report

## American River Watershed

Common Features Project

Natomas Basin

Sacramento and Sutter Counties, California

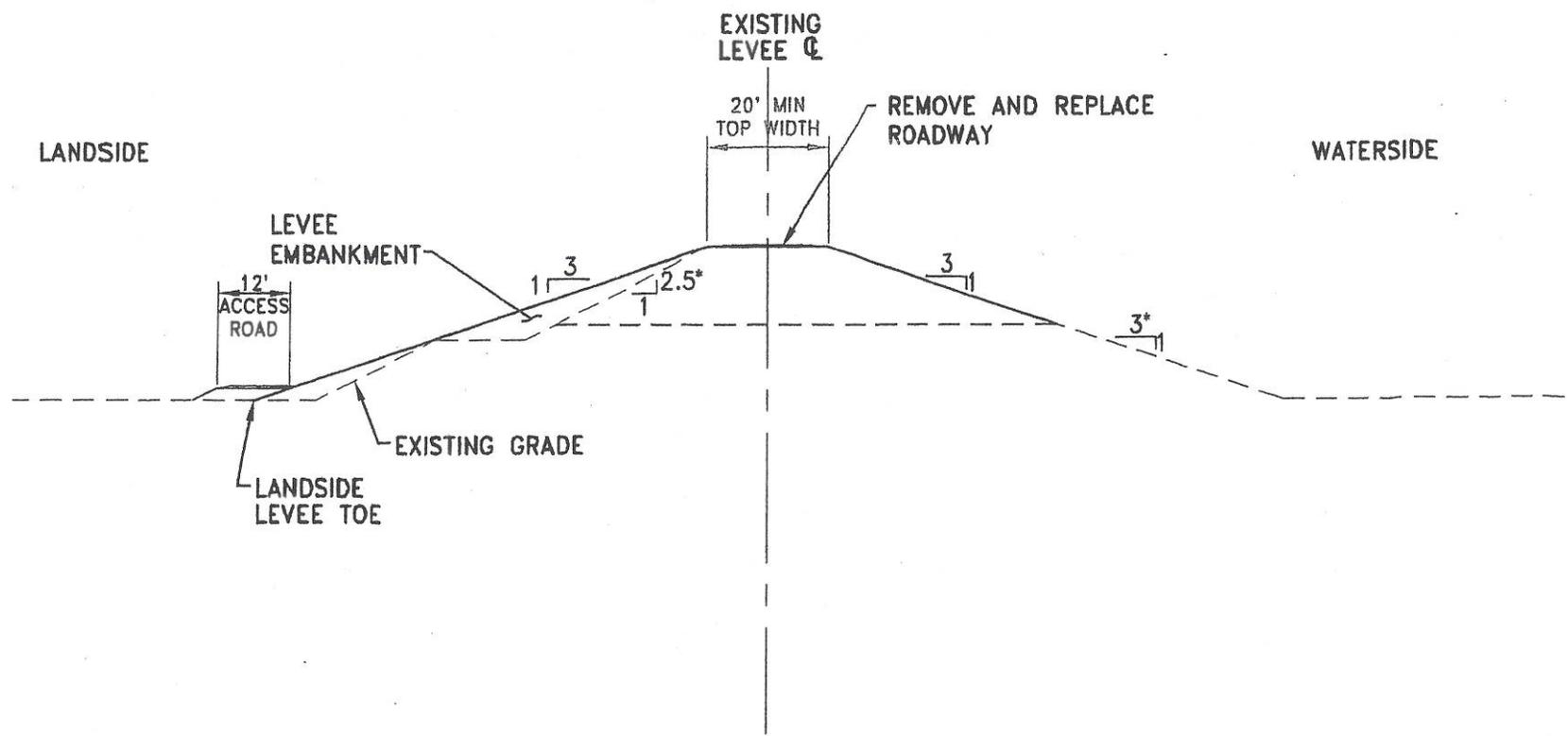


# SAFCA

Sacramento  
Area Flood  
Control  
Agency



US Army Corps  
of Engineers  
Sacramento District



NOTE:  
 \*EXISTING LEVEL E SLOPES DEPICTED  
 \*\*UNDERSEEPAGE MITIGATION NOT SHOWN

NOT TO SCALE



US Army Corps of Engineers  
 Sacramento District



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AMERICAN RIVER WATERSHED COMMON FEATURE PROJECT  
 NATOMAS POST-AUTHORIZATION CHANGE REPORT  
 APPENDIX D, CIVIL DESIGN  
 TYPICAL FIX-IN-PLACE (NO RAISE)

FIGURE  
**8**

APRIL 2010

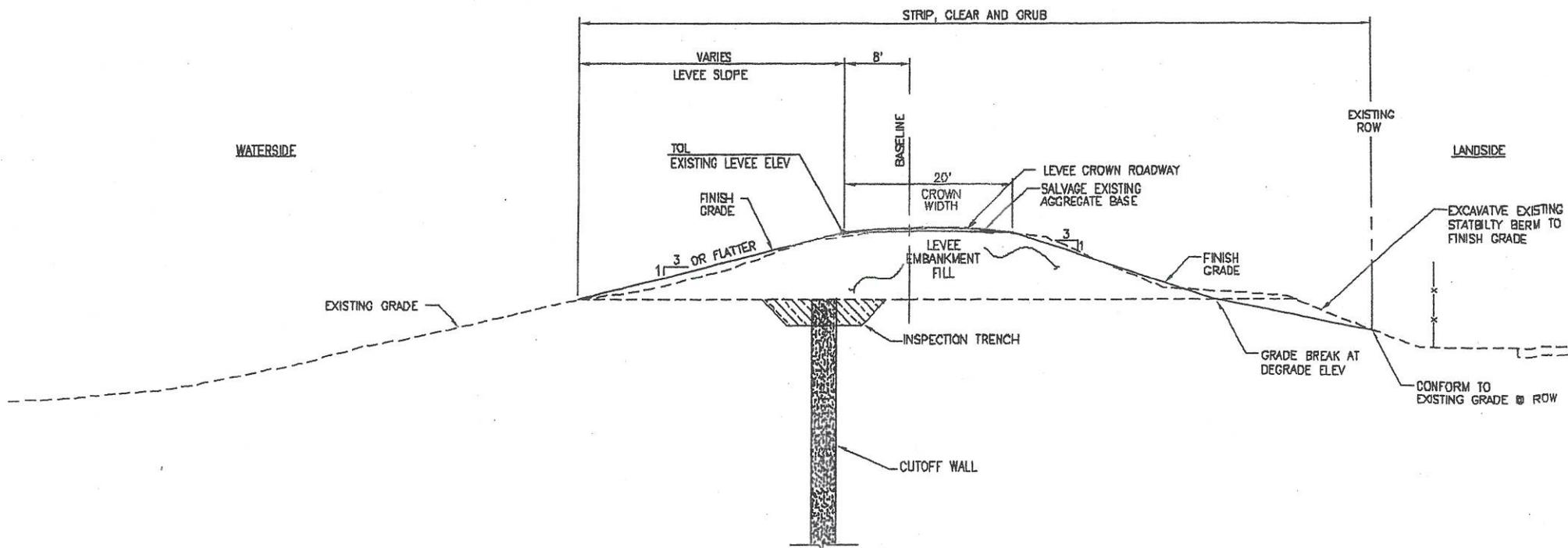
NATOMAS BASIN

J:\Jobs\9003\_USACE\9003.001\_NPAC-Support\Civil\Exhibits\NPAC-Figures.dwg 4/28/10 9:26am ccontreras

9658 67

3

2



3 **TYPICAL FIX IN PLACE CUTOFF WALL**  
SCALE: 1"=10'

C 750